

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 14, 2005

FREDDIE J. RODRIGUE v. CHARLES TRAUGHBER ET AL.

Appeal from the Chancery Court for Davidson County
No. 04-487-III Ellen Hobbs Lyle, Chancellor

No. M2004-01597-COA-R3-CV - Filed October 27, 2005

This appeal arises out of a prisoner's Petition for Writ of Certiorari seeking review of a decision of the Tennessee Board of Probation and Parole to deny him parole. Because the petition was not properly verified as required by Tenn. Code Ann. § 27-8-104(a) and 106 (2000), we affirm the trial court's judgment dismissing the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., WILLIAM B. CAIN, PATRICIA J. COTTRELL, and FRANK G. CLEMENT, JR., JJ., delivered the opinion of the court.

Freddie J. Rodrigue, Henning, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Jennifer L. Brenner, Nashville, Tennessee, for the appellees, Tennessee Board of Probation and Parole and Charles Traughber.

MEMORANDUM OPINION¹

Freddie Rodrigue, an inmate in the custody of the Tennessee Department of Correction, appeared before the Tennessee Board of Probation and Parole on January 23, 2004, seeking parole. The Board denied Mr. Rodrigue's request for parole. Rather than appeal the Board's decision, Mr. Rodrigue filed a Petition for Writ of Certiorari in the Chancery Court for Davidson County on

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

February 13, 2004. The petition contained a “Verification / Declaration of Oath” signed only by the appellant and purporting to be self notarized pursuant to 28 U.S.C. § 1746. The Board promptly filed a Tenn. R. Civ. P. 12.02 motion to dismiss, in part on the ground that the petition was not properly verified. The trial court dismissed the petition on June 18, 2005.

Tenn. Code Ann. § 27-8-104(a) grants trial courts the power to issue writs of certiorari “on sufficient cause, supported by oath or affirmation.” Tennessee Code Annotated § 27-8-106 provides: “The petition for certiorari may be sworn to before the Clerk of the Circuit Court, the Judge, any Judge of the Court of General Sessions, or a notary public, and shall state that it is the first application for the writ.” A petition for writ of certiorari that is not verified in accordance with Tenn. Code Ann. § 27-8-106 must be dismissed. *Bowling v. Tennessee Bd. of Paroles*, No. M2001-00138-COA-R3-CV, 2002 WL 772695, at *3 (Tenn. Ct. App. Apr. 30, 2002) *pet. reh’g denied* (Tenn. Ct. App. May 22, 2002) (No Tenn. R. App. P. 11 application filed).

Mr. Rodrigue’s petition was not sworn to before a clerk, a judge, or a notary public as required by Tenn. Code Ann. § 27-8-106. Mr. Rodrigue attempted to self notarize the petition by signing a “Verification / Declaration of Oath” pursuant to 28 U.S.C. § 1746. However, 8 U.S.C. § 1746 does not apply in state courts. *Griffin v. State*, No. E2001-01932-CCA-R3-PC, 2002 WL 236697 (Tenn. Crim. App. Feb. 19, 2002) (No Tenn. R. App. P. 11 application filed) (Holding that the “verified under oath” requirement of Tenn. Code Ann. § 40-30-204 (2003) requires the oath be made in the presence of a third person qualified to take oaths and that prisoners may not verify their own petitions). Moreover, because the trial court was without jurisdiction to consider a petition that was not verified, the trial court had no choice but to dismiss the petition and did not err in failing to allow Mr. Rodrigue an opportunity to amend his petition. *Depew v. Kings, Inc.*, 197 Tenn. 569, 571, 276 S.W.2d 728, 729 (1955).

We affirm the trial court’s judgment and remand the case to the trial court for such further proceedings as may be necessary. We also tax the costs of the appeal to Freddie Rodrigue for which execution, if necessary, may issue.

PER CURIAM